

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 6743 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed
to see the judgements?No

2. To be referred to the Reporter or not?
No

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
No

5. Whether it is to be circulated to the Civil Judge?
No

VISHNUBHAI GOVINDBHAI

Versus

STATE OF GUJARAT

Appearance:

MR AM PAREKH for Petitioner

Mr. K.P. Rawal, APP, for Respondent No. 1

MR M.M.Tirmizi, for Respondent No. 2

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 10/02/98

ORAL JUDGEMENT

Rule. Service of Rule is waived by learned Additional Government Pleader, Mr. K.P. Rawal, for respondent No.1 and learned advocate Mr. M.M.Tirmizi for respondent No.2. By the consent of the learned advocates for the parties, this Criminal Misc. Application is taken up for final hearing.

The petitioner, Vishnubha Govindbhai, has approached this Court, by way of filing this Criminal Misc. Application, under Section 482 of the Code of Criminal Procedure ('Code' for short), for quashing the complaint, bearing C.R.No.I-380 of 1997, filed by respondent No.2 (original complainant), pending for investigation at Kadi Police Station, for the offences punishable under Section 363, 366 and 114 of the Indian Penal Code.

The complainant is the uncle of minor girl, Nila, who is the daughter of Rameshbhai Chhanabhai. The said minor girl was kidnapped from the lawful guardianship of the father, on the first occasion, on August 21, 1997, by the petitioner with the help of four other persons. Rameshbhai, who is the father of minor girl, Nila, had lodged first information report at Kalol Police Station, being C.R. No.I-143/97, for the offences punishable under Sections 363, 366, 368 and 120, etc. of the Indian Penal Code. After the investigation, the concerned Police Station has already submitted chargesheet against the petitioner herein and four other persons in the court of the learned Judicial Magistrate, First Class, Kalol.

As per the allegations made in the present complaint, minor girl, Nila, was brought to the complainant's place and she was put in the custody and guardianship of respondent No.2 herein (original complainant) at Kadi. It is alleged in the complaint that, because of Navratri Festival, minor girl, Nila, had gone to attend Garba on October 10, 1997 and she did not return to the complainant's house. Thus, it is alleged

that Nila, being minor girl, was kidnapped from the lawful guardianship of the complainant. The complainant, who is the uncle of the minor girl, Nila, lodged first information report on October 25, 1997, at 14 hours, at Kadi Police Station, which was registered at C.R. No.I-380/97.

It is the submission of the learned advocate for the petitioner that the petitioner is already chargesheeted for the offences punishable under Section 363, 366, 368 and other Sections of the Indian Penal Code and, therefore, no second first information report can be filed for the said offences. It is, further, submitted by the learned advocate for the petitioner that, in the first complaint, which was lodged by the father of the minor girl, Nila, charge-sheet has already been submitted and this second complaint is lodged with a view to harass the petitioner and it is a sheer abuse of process of law.

None of the contentions raised by the learned advocate for the petitioner deserves merit, and the same are liable to be rejected. It must be stated that the first complaint was lodged by the father on September 1, 1997, as minor girl, Nila, was kidnapped from the lawful guardianship of the father on August 21, 1997. The second complaint was lodged by the uncle, who was entrusted with the guardianship of minor girl, Nila, at Kadi, as she was kidnapped by the petitioner on October 10, 1997, from the lawful guardianship of the complainant, who is the uncle. It is an admitted fact that Nila, on both the occasions, was a minor girl. The uncle, who was entrusted with the guardianship of minor girl, Nila, was entitled to have her custody and the minor girl was kidnapped out of his lawful guardianship without his consent. Therefore, in my opinion, the second complaint is maintainable, because it has given rise to separate offences punishable under Section 363 and 336 read with Section 114 of the Indian Penal Code. Reading the first information report dated October 25, 1997, it is, prima facie, established that minor girl, Nila, was in the lawful guardianship of the complainant, namely, Dashratbhai Parshotamdas Patel, and she was kidnapped without his consent and, therefore, prima facie, the offence of kidnapping is established. The crime is still under investigation and, therefore, at this stage, it cannot be said that no offence is committed by the petitioner and four other persons. Further, the Investigating Agency after taking cognizance of the crime is carrying on the investigation and, the statutory right of the Investigating Agency to carry on investigation cannot be interfered with by the court

exercising its inherent powers under Section 482 of the Code.

As a result of foregoing discussion, I do not find any substance in this application and the same is rejected. Rule is discharged. The interim relief stands vacated.

(swamy)